



IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELOUISE PEPION COBELL, et al.,)

Plaintiffs-Appellees,)

v.)

GALE A. NORTON,
Secretary of the Interior, et al.,)

Defendants-Appellants.)

Nos. 03-5262, 04-5084

[Civil Action No. 96-1285 (D.D.C.)]

**REPLY IN SUPPORT OF GOVERNMENT'S EMERGENCY MOTION FOR
CONSOLIDATION OF APPEALS**

As we explained in our motion to consolidate, the court's order of March 15, 2004 purports to "supersede" and "replace" the preliminary injunction of July 28, 2003. The government's appeal from the July 28 order is proceeding on an expedited basis, and the government's opening brief is due on April 6, 2004. The government's appeal from the structural injunction, No. 03-5314, is proceeding on the same expedited briefing schedule as the appeal from the July 2003 preliminary injunction, No. 03-5262. Because the appeal from the March 15 injunction involves the same subject matter as the July 28, 2003 injunction, we have asked that the appeals from both orders be consolidated. In this way, the appeals from all related orders can be heard expeditiously. If the Court grants our motion to consolidate No. 03-5262 and No. 04-5084, the government will file one brief in those consolidated appeals on April 6, 2004.

Plaintiffs do not oppose this motion. Without explanation, however, they ask that the word limit for their responsive brief be enlarged to 20,000 words. The government takes no position on this request. However, we seek no similar enlargement of the word count. In the structural injunction appeal, which is proceeding simultaneously, the Court, at the government's request, expanded the word count to 20,000 words. The government requested that expansion because of the length and breadth of the opinions on review. We do not require a similar expansion here. Because

the government will be able to set out the background of the case fully in its structural injunction appeal, any need for an enlargement is obviated.

CONCLUSION

The appeals in Nos. 03-5262 and 04-5084 should be consolidated, and the two appeals should proceed on the briefing schedule already in existence for No. 03-5262.

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

ROSCOE C. HOWARD, JR.
United States Attorney

ROBERT E. KOPP
MARK B. STERN
THOMAS M. BONDY
CHARLES W. SCARBOROUGH
ALISA B. KLEIN
(202) 514-5089
Attorneys, Appellate Staff
Civil Division, Room 9108
Department of Justice
601 D Street, N.W.
Washington, D.C. 20530

Thomas M. Bondy
Charles W. Scarborough

MARCH 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2004, I caused copies of the foregoing reply to be sent to the Court and to the following by hand delivery:

The Honorable Royce C. Lamberth
United States District Court
United States Courthouse
Third and Constitution Ave., N.W.
Washington, D.C. 20001

Keith M. Harper
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 785-4166

and to the following by federal express, overnight mail:

Elliott H. Levitas
Law Office of Elliott H. Levitas
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309-4530
(404) 815-6450

and to the following by regular, first class mail:

Dennis Marc Gingold
Law Office of Dennis Marc Gingold
607 14th Street, N.W., Box 6
Washington, D.C. 20005

Earl Old Person (pro se)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417


THOMAS M. BONDY